

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

ALBERT GRAY, Administrator, *et al*

v.

JEFFREY DERDERIAN, *et al*

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:

C.A. No. 04-312 L

**ANSWER OF DEFENDANT, AMERICAN FOAM CORPORATION,
TO PLAINTIFFS' COMPLAINT**

Now comes Defendant, ***American Foam Corporation***, and hereby provides answer
to Plaintiffs' Complaint as follows:

PARTIES

Plaintiffs

1. Defendant is without knowledge or information sufficient to form a belief as
to the truth of the allegations set forth in Paragraphs 1-226 of Plaintiffs' Complaint, and,
therefore, leaves Plaintiffs to their proof.

GENERAL ALLEGATIONS AS TO ALL DEFENDANTS

271. Defendant denies the allegations set forth in Paragraph 271 of Plaintiffs'
Complaint.

272. Defendant restates its responses to all prior paragraphs of Plaintiffs'
Complaint as if fully set forth herein.

273-279. As to Paragraphs 273-279 of Plaintiffs' Complaint, Defendant is without
knowledge or information sufficient to form a belief as to the truth of the allegations set
forth therein, and, therefore, denies same.)

40

COUNTS 1-40, 43-64

As to Paragraphs 280, 282, 287, 289, 294, 296, 300, 302, 308, 310, 316, 318, 324, 326, 332, 340, 342, 348, 350, 356, 358, 364, 366, 372, 374, 385, 393, 402, 408, 425, 427, 429, 431, 436, 438, 444, 450, 456, 472, 481, 497, 502, 507, 511, 516, 520, 525, 530, 535, 537, 542, 547, 550, 553, 565, 570, 576, 578, 580, 588, 590, 596, 598, 600 and 606 of Plaintiffs' Complaint, Defendant restates its responses to all prior paragraphs of Plaintiffs' Complaint as if fully set forth herein.

As to Paragraphs 281, 283-286, 288, 290-293, 295, 297-299, 301, 303-307, 309, 311-315, 317, 319, 320-323, 325, 327-331, 333, 334-339, 341, 343, 344-347, 349, 351, 352-355, 359-363, 365, 367-371, 373, 375-384, 386, 387-392, 394-401, 403-407, 409-424, 426, 428, 430, 432-435, 437, 439-443, 445-449, 451-455, 457, 468-471, 473-480, 482-485, 498-501, 503-506, 508-510, 512-515, 517-519, 521-524, 526-529, 531-534, 536, 538-541, 543-546, 548, 549, 551, 552, 554-564, 566-569, 571-575, 577, 579, 581-587, 589, 591-595, 597, 599, 601-605, and 607-610 of Plaintiffs' Complaint, Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein, and therefore, denies same.

COUNT 35

Barry H. Warner

458. Defendant admits the allegations set forth in Paragraph 458 of Plaintiffs' Complaint.

459. Defendant admits the allegations set forth in Paragraph 459 of Plaintiffs' Complaint.

460. Defendant denies the allegations set forth in Paragraph 460 of Plaintiffs' Complaint.

461. Defendant denies the allegations set forth in Paragraph 461 of Plaintiffs' Complaint.

462. Defendant denies the allegations set forth in Paragraph 462 of Plaintiffs' Complaint.

463. Defendant denies the allegations set forth in Paragraph 463 of Plaintiffs' Complaint.

COUNT 36

Barry H. Warner - Negligence

464. Defendant restates its responses to all prior paragraphs of Plaintiffs' Complaint as if fully set forth herein.

465. Defendant denies the allegations set forth in Paragraph 465 of Plaintiffs' Complaint.

COUNT 37

Violation of Rhode Island General Laws Title 9, Chapter 1, Section 2

466. Defendant restates its responses to all prior paragraphs of Plaintiffs' Complaint as if fully set forth herein.

467. Defendant denies the allegations set forth in Paragraph 467 of Plaintiffs' Complaint.

COUNT 41

American Foam Corporation - Negligence

486. Defendant restates its responses to all prior paragraphs of Plaintiffs' Complaint as if fully set forth herein.

487. Defendant admits the allegations set forth in Paragraph 487 of Plaintiffs' Complaint.

488. Defendant admits it is a distributor of foam and that a sale of the foam took place prior to February 20, 2003, but is without knowledge as to who actually sold the foam to The Station nightclub. Defendant denies the remaining allegations set forth in Paragraph 488 of Plaintiffs' Complaint.

489. Defendant denies the allegations set forth in Paragraph 489 of Plaintiffs' Complaint.

490. Defendant denies the allegations set forth in Paragraph 490 of Plaintiffs' Complaint.

491. Defendant denies the allegations set forth in Paragraph 491 of Plaintiffs' Complaint.

COUNT 42

American Foam Corporation - Strict Liability

492. Defendant restates its responses to all prior paragraphs of Plaintiffs' Complaint as if fully set forth herein.

493. Defendant denies the allegations set forth in Paragraph 493 of Plaintiffs' Complaint.

494. Defendant denies the allegations set forth in Paragraph 494 of Plaintiffs' Complaint.

495. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in Paragraph 495 of Plaintiffs' Complaint, and therefore, denies same.

496. Defendant denies the allegations set forth in Paragraph 496 of Plaintiffs' Complaint.

WHEREFORE, Defendant, *American Foam Corporation*, demands judgment against Plaintiffs for costs.

FIRST AFFIRMATIVE DEFENSE

Defendant denies the applicability of the doctrine of strict liability in tort to this litigation.

SECOND AFFIRMATIVE DEFENSE

Defendant states that Plaintiffs' claims against Defendant are barred because damages or losses experienced, if any, were not due to any act or failure to act of this Defendant, but were caused solely by the acts of a third-party or parties for whose acts or failure to act this Defendant is not responsible.

THIRD AFFIRMATIVE DEFENSE

Defendant states that Plaintiffs were not in the exercise of due care, but rather the negligence of Plaintiffs contributed to or caused the injuries or damages complained of, and therefore, the recovery of Plaintiffs is barred in whole or in part, or is subject to diminution.

FOURTH AFFIRMATIVE DEFENSE

Defendant gave no warranties, express or implied, to Plaintiffs or to anyone acting of their behalf.

FIFTH AFFIRMATIVE DEFENSE

Defendant states that if there were express or implied warranties as alleged in the Complaint, which Defendant specifically denies, Plaintiffs were not within the scope of any such alleged warranties and no sale to Plaintiffs ever occurred of any product sold or distributed by Defendant.

SIXTH AFFIRMATIVE DEFENSE

Defendant states that Plaintiffs' claims based on allegations of express or implied warranty are barred for the reason that no sale of goods occurred.

SEVENTH AFFIRMATIVE DEFENSE

Defendant states that if Defendant's agents or servants made any express warranties, which Defendant specifically denies, then the agents or servants of Defendant did so without authority, express or implied.

EIGHTH AFFIRMATIVE DEFENSE

Defendant states that if it was liable, negligent or in breach of any warranty, all of which it expressly denies, Defendant's liability in any or all of those events has been terminated by the intervening acts, omissions, or negligence of others for whose conduct Defendant is not legally responsible.

NINTH AFFIRMATIVE DEFENSE

Defendant states that the Complaint fails to state any claim upon which relief can be granted to the extent that it seeks punitive or exemplary damages, which are not recoverable under applicable law.

TENTH AFFIRMATIVE DEFENSE

Defendant states that an award of punitive damages against Defendant in this case would be unconstitutional and in violation of the due process and equal protection clauses of the Fourteenth Amendment of the Constitution of the United States.

ELEVENTH AFFIRMATIVE DEFENSE

Defendant states that if Defendant, its agents or servants made any express or implied warranties, which Defendant specifically denies, then Defendant denies that it breached any of the warranties.

TWELFTH AFFIRMATIVE DEFENSE

Defendant states that if Defendant, its agents or servants made any express warranties, allegations which Defendant specifically denies, then Plaintiffs did not rely on the express warranties and further, there was no such reliance by any person or entity authorized to represent Plaintiffs.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendant states that Plaintiffs failed to give notice of the alleged breaches of warranties within a reasonable time.

FOURTEENTH AFFIRMATIVE DEFENSE

Defendant states that Plaintiffs were not a third-party beneficiary with reference to any alleged warranties, either express or implied, and, therefore, Plaintiffs cannot recover in this action.

FIFTEENTH AFFIRMATIVE DEFENSE

Defendant states that if Plaintiffs prove that Plaintiffs were injured as alleged, said injuries were caused by the intervening and/or superseding acts of third persons for whom this Defendant is not liable.

SIXTEENTH AFFIRMATIVE DEFENSE

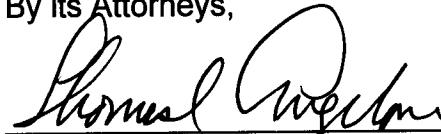
Defendant pleads *General Laws of Rhode Island*, §9-1-32.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs did not rely upon the skill and judgment of Defendant in selecting the product referred to in the Complaint.

AMERICAN FOAM CORPORATION

By its Attorneys,



Thomas C. Angelone Esq./#1373

HODOSH, SPINELLA & ANGELONE PC

One Turks Head Place, Suite 1050


Providence, Rhode Island 02903

(401) 274-0200

Fax (401) 274-7538

Dated: August 30, 2004

Defendant, ***American Foam Corporation***, hereby claims a trial by jury.



Thomas C. Angelone, Esq.

CERTIFICATION

I hereby certify that on this th30 day of August, 2004, I caused a copy of the within **Answer** to be mailed by first class mail, postage prepaid to the following attorney(s) of record:

Stephen E. Breggia, Esq.
Breggia, Bowen & Grande
395 Smith Street
Providence, RI 02908

Joseph V. Cavanagh, Jr., Esq.
Kristin E. Rodgers, Esq.
Blish & Cavanagh, LLP
30 Exchange Terrace
Providence, RI 02903

Ronald J. Creamer, Esq.
155 South Main Street, Suite 400
Providence, RI 02903

John R. Crockett, Esq.
Susan S. Wettle, Esq.
Carl A. Henlein, Esq.
Frost Brown Todd, LLC
400 West Market Street, 32nd Floor
Louisville, KY 40202-3363

Brian Cunha, Esq.
Karen A. Alegria, Esq.
Brian Cunha & Associates
904 Broadway
East Providence, RI 02914

Anthony F. DeMarco, Esq.
Reynolds, DeMarco & Boland, Ltd.
170 Westminster Street, Suite 200
Providence, RI 02903

Gerald C. DeMaria, Esq.
James A. Ruggieri, Esq.
Higgins, Cavanagh & Cooney
123 Dyer Street
Providence, RI 02903

Marc DeSisto, Esq.
Desisto Law
211 Angell Street
P.O. Box 2563
Providence, RI 02906-2563

Curtis R. Diedrich, Esq.
Sloane & Walsh
Three Center Plaza
Boston, MA 02108

Stefanie DiMaio Larivee, Esq.
215 Broadway
Providence, RI 02903

Christopher C. Fallon, Jr., Esq.
Cozen O'Connor
1900 Market Street
Philadelphia, PA 19103-3508

Edward T. Hinchey, Esq.
James Scanlon, Esq.
Sloan and Walsh, LLP
Three Center Plaza, 8th Floor
Boston, MA 02108

Daniel J. Horgan, Esq.
The Horgan Law Offices
Shaw's Cove 5, Suite 200
New London, CT 06320

Patrick T. Jones, Esq.
Cooley Manion Jones, LLP
21 Custom House Street
Boston, MA 02110

Bruce Keller, Esq.
Debevoise & Plimpton
919 Third Avenue
New York, NY 10022

Ronald Langlois, Esq.
Smith & Brink, P.C.
One State Street, Suite 400
Providence, RI 02908

Donna M. Lamontagne, Esq.
Zizik, Powers, O'Connell, Spaulding
& Lamontagne, P.C.
40 Westminster Street, Suite 201
Providence, RI 02903

Faith A. LaSalle, Esq.
One Turks Head Place
Providence, RI 02903

James R. Lee, Esq.
State of Rhode Island
Department of Attorney General
150 South Main Street
Providence, RI 02903

W. Thomas McGough, Jr., Esq.
James J. Restivo, Esq.
Reed Smith LLP
435 Sixth Avenue
Pittsburg, PA 15219

Daniel P. McKiernan, Esq.
146 Westminster Street
Providence, RI 02903

Edwin F. McPherson, Esq.
McPherson & Kalmansohn
1801 Century Park East, 24th Floor
Los Angeles, CA 90067

Eva Marie Mancuso, Esq.
Hamel, Waxler, Allen & Collins
387 Atwells Avenue
Providence, RI 02909

Mark S. Mandell, Esq.
Mandell, Schwartz & Boisclair
One Park Row
Providence, RI 02903

Donald J. Maroney, Esq.
James H. Reilly, Esq.
Kelly, Kelleher, Reilly & Simpson
146 Westminster Street, Suite 500
Providence, RI 02903

W. Thomas McGough, Jr., Esq.
James J. Restivo, Esq.
Reed Smith LLP
435 Sixth Avenue
Pittsburg, PA 15219

Matthew F. Medeiros, Esq.
Little Medeiros Kinder Bulman & Whitney
72 Pine Street
Providence, RI 02903

Howard A. Merten, Esq.
Benjamin V. White, III, Esq.
Eric M. Sommers, Esq.
Vetter & White
20 Washington Place
Providence, RI 02903

Grant H. Miller, Jr., Esq.
Cynthia A. Jaworski, Esq.
Law Offices of Grant H. Miller, Jr.
55 Capital Boulevard, Suite 210
Rocky Hill, CT 06067

Steven A. Minicucci, Esq.
Calvino Law Associates
373 Elmwood Avenue
Providence, RI 02907

Ralph J. Monaco, Esq.
Patrick J. Day, Esq.
Conway & Londregan, P.C.
38 Huntington Street
P.O. Box 1351
New London, CT 06320

James T. Murphy, Esq.
Megan J. Goguen, Esq.
Hanson Curran LLP
146 Westminster Street
Providence, RI 02903

William E. Murray, Esq.
Edwards & Angell, LLP
90 State House Square
Hartford, CT 06103

John J. Nazzaro, Esq.
Law Offices of John J. Nazzaro, LLC
164 Hempstead Street
New London, CT 06320

Mark T. Nugent, Esq.
Paul Sullivan, Esq.
Morrison, Mahoney & Miller
One Providence Washington Plaza
6th Floor
Providence, RI 02903

Edward B. O'Connell, Jr., Esq.
Waller, Smith & Palmer, PC
51 Eugene O'Neill Drive
P.O. Box 88
New London, CT 06320

Mark K. Ostrowski, Esq.
Jose M. Rojas, Esq.
Shipman & Goodwin, LLP
One American Row
Hartford, CT 06103-2819

Carla Ottaviano, Esq.
Law Offices of DuBorg & Farrell
200 Glastonbury Boulevard, #301
Glastonbury, CT 06033

Charles N. Redihan, Esq.
Kiernan, Plunkett & Redihan
91 Friendship Street
Providence, RI 02903

Ronald J. Resmini, Esq.
Law Offices of Ronald J. Resmini, Ltd.
155 South Main Street
Providence, RI 02903

Robert I. Reardon, Jr., Esq.
Robert T. Rimmer, Esq.
The Reardon Law Firm, P.C.
160 Hempstead Street
New London, CT 06320

William P. Robinson, III, Esq.
Stephen M. Prignano, Esq.
Stephen J. MacGillivray, Esq.
Edwards & Angell, LLP
2800 Financial Plaza
Providence, RI 02903

Michael T. Ryan, Esq.
Ryan, Ryan, Johnson & Deluca
80 4th Street
P.O. Box 3057
Stamford, CT 06905

Michael A. St. Pierre, Esq.
Revens, Revens & St. Pierre
946 Centerville Road
Warwick, RI 02886

Randall L. Souza, Esq.
Fred A. Kelly, Jr., Esq.
Nixon Peabody, LLP
One Citizens Plaza, Suite 700
Providence, RI 02903

Andrew J. Trevelise, Esq.
Reed Smith LLP
2500 One Liberty Place
Philadelphia, PA 19103-7301

Scott J. Tucker, Esq.
Tucker, Heifetz & Slatzman
Three School Street
Boston, MA 02108

Max Wistow, Esq.
Wistow & Barylick Inc.
61 Weybosset Street
Providence, RI 02903

David B. Zabel, Esq.
Cohen & Wolf
1115 Broad Street
P.O. Box 1821
Bridgeport, CT 06601-1821

/mvc

A handwritten signature in cursive script, reading "Mary V. Conlon", is written over a solid horizontal line.